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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,972	10/06/2003	Peter Irrgang	05727-00021	1809

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/679,972

Applicant(s)

IRRGANG ET AL.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 31, 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,7,11 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,8-10 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 31, 2005 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, 6, 8, 9, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugamata in view of Pontis and Yamamoto et al. for substantially the same reasons stated in the last Office Action.

The patent to Sugamata shows a fly fishing assembly having an elongated rod, a reel seat body on one end of the rod for receiving a reel, a reel on the bottom. The reel seat body, an up locking reel lock for locking one end of the reel on the reel seat body, and a handle on the rod including an elongated sleeve on the rod as shown by Sugamata. Further, Sugamata shows the elongated sleeve having a smooth bulbous

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central portion, a flaring end, a first smooth waisted portion between the central portion and a flaring rear end. Sugamata shows the flaring rear end of the sleeve inhibiting rearward sliding of a user's hand from the handle during a cast as shown in Fig. 1.

Sugamata does not show a semi-cylindrical cowl on the rear end of the sleeve partially surrounding the top and sides of the rod in the vicinity of the reel. Sugamata does not show the cowl having a top and side surfaces forming a continuation of the flaring end of the rod handle. Sugamata does not show a rear flange extending around the bottom of the handle, a convex bottom side edges, a convex trailing end, or a sleeve overlapping the reel seat body for retaining a second end of the reel on the reel seat body. The patent to Pontis shows a fishing rod having a handle with a semi-cylindrical cowl having a top and side surfaces forming a continuation of the flaring end as shown in Fig. 2. Pontis shows the cowl on the rear end of a sleeve partially surrounding the top and sides of a fishing rod in the area of the reel. Pontis shows the cowl including a flange on a bottom rear end surface adjacent the reel and cowl edges as recited noting Figs. 1, 2, 5, and 6. In reference to claims 1, 5, 9, it would have been obvious to provide Sugamata with a semi-cylindrical cowl as shown by Pontis to provide extended protection and comfort to the hand of a user. The patent to Yamamoto shows a fishing rod and reel having an elongated grip 14 overlapping the reel seat body in order to retain the reel foot on the reel seat assembly. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Sugamata with an overlapping elongated grip as shown by Yamamoto to retain the second end of the reel. In reference to claims 2, 6, and 10, Pontis shows the top and side surfaces having

convex trailing top and side edges. In reference to claims 8 and 12, Pontis shows the cowl to be removably joined with the rod handle.

Response to Amendment

3. The terminal disclaimer filed by applicant overcomes the double patenting rejection. The declaration under 37 CFR 1.132 filed March 28, 2005 has been considered but does not overcome the applicability of the Design Patent to Pontis US 131,494. Mr. Gann states that the terms "up-locking" and "down-locking" have specific means in the fly fishing industry, but this is not the level of the ordinary fisherman in the art. Hence the claims will be given their broadest reasonable interpretation and Pontis is relevant in rejecting the present claims. The examiner would further like to point out that the present invention is concerned with a supplemental handle for covering part of the reel seat and that one skilled in the art would look at all fishing rods that have reel seats and reels when considering a supplemental handle since a user's hand could become uncomfortable with casting, spinning, spin-casting and fly fishing rods due to the nature of the reel seat. Applicant argues that none of the reference show an up-locking rod. However, the preamble of the claim is taken to be prior art and it should be pointed out that Figs. 1-2 of the present invention show an up-locking rod and reel. It should be pointed out that up-locking could be considered to be having the locking rings above the reel since the locking is taking place above the reel and the same rational could be applied to down-locking. With that thought, the cowl of Pontis can be considered as extending down the rod. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it

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must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, it is not clear why in *Sugamata* that the telescope obviates the need and eliminates the possibility of having any sort of extension located over the reel seat. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kurt Rowan
Primary Examiner
Art Unit 3643

KR